



General Assembly
Security Council

Distr.
GENERAL

A/48/874
S/1994/189
18 February 1994
ENGLISH
ORIGINAL: FRENCH

GENERAL ASSEMBLY
Forty-eighth session
Agenda item 8

SECURITY COUNCIL
Forty-ninth year

ADOPTION OF THE AGENDA AND ORGANIZATION OF WORK

Letter dated 16 February 1994 from the Permanent Representative of
Slovenia to the United Nations addressed to the Secretary-General

I have the honour to transmit herewith the text of opinions Nos. 8, 9 and 10 dated 4 July 1992 rendered by the Arbitration Commission of the International Conference on the Former Yugoslavia concerning the dissolution and extinction of the Socialist Federal Republic of Yugoslavia.

I should be grateful if you would have the text of this letter and its annex distributed as a document of the General Assembly, under item 8 of the agenda of the forty-eighth session, and of the Security Council.

(Signed) Danilo TÜRK
Ambassador
Permanent Representative

Annex

ARBITRATION COMMISSION

Opinion No. 8

On 18 May 1992, the Chairman of the Arbitration Commission received a letter from Lord Carrington, Chairman of the Conference on Yugoslavia, putting three questions to the Commission, the text of which is reproduced in the interlocutory decision rendered today by the Arbitration Commission.

In the opinion of the Commission, the answers to questions Nos. 1 and 3 depend on the answer given to question No. 2. The Commission will therefore start by giving its opinion on question No. 2. Questions Nos. 1 and 3 will be dealt with in opinions Nos. 10 and 9 respectively.

Question No. 2 is as follows:

Question No. 2

"In its opinion No. 1 of 29 November 1991, the Arbitration Commission was of the opinion 'that the Socialist Federal Republic of Yugoslavia [was] in the process of dissolution'. Can this dissolution now be regarded as complete?"

The Commission has taken note of the memoranda, observations and documents transmitted by the Republics of Bosnia and Herzegovina, Croatia, Macedonia, Montenegro, Serbia and Slovenia.

In an interlocutory decision today, the Commission found that this matter was within its competence.

1. In its opinion No. 1 of 29 November 1991, the Arbitration Commission found that:

- A State's existence or non-existence had to be established on the basis of universally acknowledged principles of international law concerning the constituent elements of a State;

- The Socialist Federal Republic of Yugoslavia was at that time still an international legal entity but the desire for independence had been expressed through referendums in the Republics of Slovenia, Croatia and Macedonia, and through a resolution on sovereignty in Bosnia and Herzegovina;

- The composition and functioning of essential bodies of the Federation no longer satisfied the intrinsic requirements of a federal State in respect of participation and representativeness;

- Recourse to force between different parts of the Federation had demonstrated the Federation's impotence;

/...

- The Socialist Federal Republic of Yugoslavia was in the process of dissolution but it was nevertheless up to the Republics which so wished to constitute, if appropriate, a new association with democratic institutions of their choice;

- The existence or extinction of a State was, in any case, a question of fact.

2. The dissolution of a State means that it no longer has legal personality, and this has major repercussions in international law. It therefore calls for the greatest prudence.

The Commission finds that the existence of a federal State, made up of a number of distinct federal entities, is seriously compromised when a majority of these entities, embracing a greater part of the territory and population of the Federation, constitute themselves as sovereign States, with the result that federal authority may no longer be effectively exercised in that territory.

By the same token, while recognition of a State by other States has only declarative value, such recognition, together with membership in international organizations, bears witness to these States' conviction that the political entity so recognized is a reality and confers upon it certain rights and obligations under international law.

3. The Arbitration Commission notes that, since issuing opinion No. 1:

- The referendum proposed in its opinion No. 4 was held in Bosnia and Herzegovina on 29 February and 1 March 1992, and a large majority of the population voted in favour of that Republic's independence;

- Serbia and Montenegro, as republics with equal standing in law, have constituted a new State with the name "Federal Republic of Yugoslavia", and on 27 April 1992 adopted a new Constitution;

- Most of the new States formed from the former Yugoslav republics have recognized each other's independence, thereby demonstrating that all the authority of the federal State had ended in the territories of the newly constituted States;

- The common federal bodies in which all the Yugoslav republics were represented no longer exist, and no body of that type has since functioned;

- The former national territory and population of the Socialist Federal Republic of Yugoslavia are now entirely under the sovereign authority of the new States;

- Bosnia and Herzegovina, Croatia and Slovenia have been recognized by all the States members of the European Community and by numerous other States, and were admitted to membership in the United Nations on 22 May 1992;

- United Nations Security Council resolutions 752 (1992) and 757 (1992) contain a number of references to "the former Socialist Federal Republic of Yugoslavia";

- Moreover, resolution 757 (1992) notes that "the claim by the Federal Republic of Yugoslavia (Serbia and Montenegro) to continue automatically the membership of the former Socialist Federal Republic of Yugoslavia in the United Nations has not been generally accepted";

- The declaration issued in Lisbon on 27 June 1992 by the European Council of Ministers makes express reference to "the former Yugoslavia".

4. The Arbitration Commission is therefore of the opinion:

- That the process of dissolution of the Socialist Federal Republic of Yugoslavia referred to in opinion No. 1 of 29 November 1991 is now complete and the Socialist Federal Republic of Yugoslavia no longer exists.

Paris, 4 July 1992

Opinion No. 9

On 18 May 1992, the Chairman of the Arbitration Commission received a letter from Lord Carrington, Chairman of the Conference on Yugoslavia, asking for the Commission's opinion on the following question:

"If this is the case (i.e., that the dissolution of the Socialist Federal Republic of Yugoslavia is now complete), on what basis and by what means should the problems of the succession of States arising between the different States emerging from the Socialist Federal Republic of Yugoslavia be settled?"

The Commission has taken note of the memoranda, observations and documents transmitted by the Republics of Bosnia and Herzegovina, Croatia, Macedonia, Montenegro, Serbia and Slovenia.

In an interlocutory decision today, the Commission found that this matter was within its competence.

1. As the Arbitration Commission found in opinion No. 8, the answer to this question very much depends on the answer to question No. 2 raised by the Chairman of the Conference.

In its opinion No. 8, the Arbitration Commission concluded that the process of dissolution of the Socialist Federal Republic of Yugoslavia was complete and that that State no longer existed.

New States have been created in the territory of the former Socialist Federal Republic of Yugoslavia and have replaced it. All are successor States to the former Socialist Federal Republic of Yugoslavia.

2. As the Arbitration Commission pointed out in its opinion No. 1, the succession of States is governed by the principles of international law embodied in the Vienna Conventions of 23 August 1978 and 8 April 1983, which all the republics have agreed should be the foundation for their discussions on the succession of States at the Conference on Yugoslavia.

The chief concern is that the solution adopted should lead to an equitable outcome, with the States concerned agreeing to the procedures, subject to respect for the guiding norms of general international law and, particularly, the fundamental rights of the individual and the rights of peoples and minorities.

3. In the declaration on the former Yugoslavia issued in Lisbon on 27 June 1992, the European Council of Ministers stated: "The European Economic Community and its member States will not recognize the new federal entity comprising Serbia and Montenegro as the successor State of the former Yugoslavia until the moment a decision has been taken by the qualified international institutions. They decided to demand the suspension of the Yugoslav delegation in the proceedings at the CSCE and other international forums and organizations". The European Council thereby demonstrated its conviction that the Federal Republic of Yugoslavia (Serbia and Montenegro) had no right to

/...

consider itself the sole successor to the Socialist Federal Republic of Yugoslavia.

4. The Arbitration Commission is therefore of the opinion that:

- The successor States to the Socialist Federal Republic of Yugoslavia must together settle all aspects of the succession by agreement;
- In the resulting negotiations, the successor States must try to achieve an equitable solution by drawing on the principles embodied in the 1978 and 1983 Vienna Conventions and the relevant rules of customary international law;
- Furthermore, full account must be taken of the principle of equality of rights and duties between States under international law;
- The membership of the Socialist Federal Republic of Yugoslavia in international organizations must be terminated in accordance with their respective statutes, and none of the successor States may thereupon claim for itself alone the membership rights previously enjoyed by the Socialist Federal Republic of Yugoslavia;
- Property of the Socialist Federal Republic of Yugoslavia situated in third countries must be divided equally between the successor States;
- The assets and debts of the Socialist Federal Republic of Yugoslavia must likewise be shared equitably among the successor States;
- The States concerned must settle any disputes relating to their succession to the Socialist Federal Republic of Yugoslavia that could not be settled by agreement exclusively by peaceful means, in accordance with the principle laid down in the Charter of the United Nations;
- Specifically, they must seek a solution to such disputes by enquiry, mediation, conciliation, arbitration or judicial settlement;
- Since, however, no specific question has been put to it, the Commission cannot at this stage venture an opinion on the difficulties that might arise from the very real problems associated with the succession to the former Yugoslavia.

Paris, 4 July 1992

Opinion No. 10

On 18 May 1992, the Chairman of the Arbitration Commission received a letter from Lord Carrington, Chairman of the Conference for Peace in Yugoslavia, asking for the Commission's opinion on the following question:

"In terms of international law, is the Federal Republic of Yugoslavia a new State, and thus subject to recognition by the States members of the European Community in accordance with the Declaration on Yugoslavia and the guidelines on the recognition of new States in Eastern Europe and in the Soviet Union issued by the Council of Ministers of the European Community on 16 December 1991?"

The Commission has taken note of the memoranda, observations and documents transmitted by the Republics of Bosnia and Herzegovina, Croatia, Macedonia, Montenegro, Serbia and Slovenia.

In an interlocutory decision today, the Commission found that this matter was within its competence.

1. As the Arbitration Commission found in opinion No. 8, the answer to this question depends on the answer given to question No. 2 raised by the Chairman of the Conference.

In its opinion No. 8, the Commission concluded that the process of dissolution of the Socialist Federal Republic of Yugoslavia was complete and that none of the resulting entities could claim to be the sole successor to that State.

2. On 27 April 1992, Montenegro and Serbia decided to establish a new entity with the name "Federal Republic of Yugoslavia" and adopted its Constitution.

The Arbitration Commission feels that, within the frontiers constituted by the administrative boundaries of Montenegro and Serbia within the Socialist Federal Republic of Yugoslavia, this new entity meets the criteria of public international law for a State, which were listed in opinion No. 1 of 29 November 1991. However, as the United Nations Security Council pointed out in its resolution 757 (1992) "the claim by the Federal Republic of Yugoslavia (Serbia and Montenegro) to continue automatically the membership of the former Socialist Federal Republic of Yugoslavia in the United Nations has not been generally accepted". As the Arbitration Commission points out in its opinion No. 9, the Federal Republic of Yugoslavia is a new State which could not be the sole successor to the Socialist Federal Republic of Yugoslavia.

3. This means that the Federal Republic of Yugoslavia (Serbia and Montenegro) does not ipso facto enjoy the recognition that was enjoyed, under completely different circumstances, by the Socialist Federal Republic of Yugoslavia. It therefore rests with other States, where appropriate, to recognize the new State.

4. As, however, the Arbitration Commission pointed out in its opinion No. 1, while recognition is not a prerequisite for the foundation of a State and has

only declarative value, it is none the less a discretionary act which other States may perform when they choose and in a manner of their own choosing, subject only to respect for the guiding norms of general international law, particularly those which prohibit the use of force in relations with other States or those which guarantee the rights of ethnic, religious or linguistic minorities.

Furthermore, the Community and its member States, in their Declaration on Yugoslavia of 16 December 1991 and in the guidelines, adopted by them on the same date, on the recognition of new States in Eastern Europe and in the Soviet Union, set out the conditions for recognition of the Yugoslav republics.

5. Consequently, the Arbitration Commission is of the opinion that:

- The Federal Republic of Yugoslavia (Serbia and Montenegro) is a new State which cannot be considered the sole successor to the Socialist Federal Republic of Yugoslavia;

- Recognition of that State by the States members of the European Community would be subject to its compliance with the conditions laid down for such an act by general international law and by the Declaration and guidelines of 16 December 1991.

Paris, 4 July 1992
